

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

### PART 1614—SEALED BIDDING

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

#### 1614.000 Applicability.

FAR part 14 has no practical application to FEHBP contracts in view of the statutory exemption provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

### PART 1615—CONTRACTING BY NEGOTIATION

#### Subpart 1615.1—General Requirements for Negotiation

Sec.

1615.170 Negotiation authority.

#### Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

#### Subpart 1615.6—Source Selection

1615.602 Applicability.

#### Subpart 1615.8—Price Negotiation

1615.802 Policy.

1615.804–70 Certificate of cost or pricing data for community rated carriers.

1615.804–71 [Reserved]

1615.804–72 Rate reduction for defective pricing or defective cost or pricing data.

1615.805–70 Carrier investment of FEHB funds.

1615.805–71 Investment income clause.

#### Subpart 1615.9—Profit

1615.902 Policy.

1615.905 Profit analysis factors.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16040, May 1, 1987, unless otherwise noted.

#### Subpart 1615.1—General Requirements for Negotiation

##### 1615.170 Negotiation authority.

The authority to negotiate FEHBP contracts is conferred by 5 U.S.C. 8902.

#### Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

##### 1615.401 Applicability.

FAR subpart 15.4 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

#### Subpart 1615.6—Source Selection

##### 1615.602 Applicability.

FAR subpart 15.6 has no practical application to the FEHBP because prospective contractors (carriers) are considered for inclusion in the FEHBP in accordance with criteria provided in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than on the basis of competition *between* prospective carriers.

#### Subpart 1615.8—Price Negotiation

##### 1615.802 Policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.8 shall be implemented by applying the policies and procedures—to the extent practicable—as follows:

(a) For both experience rated and community rated contracts for which the FEHBP premiums for the contract term will be less than \$500,000, OPM shall not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b) Cost analysis shall be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(c)(1) A combination of cost and price analysis shall be used for contracts where premiums and subscription income are based on community rates. For contracts for which the FEHBP premiums for the contract term will be less than \$500,000, OPM shall not require the carrier to provide cost or pricing data. The carrier must submit only a rate proposal and abbreviated utilization data for the applicable contract year. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates failing this test will be subject to further review.

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHBP premiums for the contract term will be \$500,000 or more, OPM shall require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.804-70. In addition, OPM shall require the carrier to complete the proposed rates form containing cost and pricing data, and the Community Rate Questionnaire, but shall not require the carrier to send these documents to OPM. The carrier shall keep the documents on file for periodic auditor and actuarial review in accordance with 1652.204-70. OPM shall perform a basic reasonableness test on the data submitted. Rates that do not pass this test shall be subject to further OPM review.

(3) For contracts with 1,500 or more enrollee contracts for which the FEHBP premiums for the contract term will be at least \$500,000, OPM shall require the carrier to provide the data and methodology used to determine the FEHBP rates. OPM shall also require the data and methodology used to determine the rates for the carrier's similarly sized subscriber groups. The carrier shall provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM shall evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(4) Contracts shall be subject to a downward price adjustment if OPM determines that the Federal group was

charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments shall be based on the lower of the two rates determined by using the methodology (including discounts) the Carrier used for the two SSSGs.

(5) FEHBP community rated carriers shall comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(d) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based, in whole or in part, on cost analysis.

(e) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).* (1) Similarly sized subscriber group (SSSG) rating methodologies will not be used to determine the reasonableness of a community-rated carrier's demonstration project premium rates. Carrier premium rates will not be adjusted for equivalency with SSSG rating methodologies. Carriers will benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) Community-rated carriers must propose premium rates with cost or pricing data and rating methodology, and experience-rated carriers must propose premium rates with cost data and rating methodology regardless of group size or annual premiums.

[62 FR 47574, Sept. 10, 1997, as amended at 64 FR 36272, July 6, 1999; 65 FR 36386, June 8, 2000]

**1615.804-70 Certificate of cost or pricing data for community rated carriers.**

The contracting officer shall require a carrier with a contract meeting the requirements in 1615.802(c)(2) or 1615.802(c)(3) to execute the Certificate of Accurate Cost or Pricing Data contained in this section. A carrier with a contract meeting the requirements in 1615.802(c)(2) shall complete the Certificate and keep it on file at the carrier's place of business in accordance with 1652.204-70. A carrier with a contract meeting the requirements in